

November 7, 2005

The Honorable Kathy Kreag Richardson
Indiana House of Representatives
200 W. Washington Street
Indianapolis, IN 46204-2786

Official Opinion No. 2005-2

Re: Whether a Garnishee is Considered a Defendant for the Purposes of Collecting Court Filing Fees under Indiana Code section 33-37-4-6 or 33-37-5-28

Dear Representative Richardson:

You requested a legal opinion concerning whether a garnishee is considered a defendant for court fee collection purposes under Indiana Code sections 33-37-4-6 and 33-37-5-28. During the 2005 legislative session, House Bill 1113 (Pub. Law No. 176-2005)¹ revised section 33-37-4-6 and added section 33-37-5-28 in pertinent part as follows:²

Sec. 6. a) For each small claims action, the clerk shall collect ~~from the party filing the action both of the~~ following fees:

~~(1) A small claims costs fee of thirty-five dollars (\$35).~~

~~(2) A small claims service fee of five dollars (\$5) for each defendant named or added in the small claims action.~~

(1) From the party filing the action:

(A) a small claims costs fee of thirty-five dollars (\$35); and

(B) a small claims service fee of ten dollars (\$10) for each named defendant.

(2) From any party adding a defendant, a small claims service fee of ten dollars (\$10) for each defendant added in the action.

....

Sec. 28. (a) Except as provided in subsection (c), this section applies to a civil action in which the clerk is required to collect a civil costs fee under [IC 33-37-4-4\(a\)](#).

(b) The clerk shall collect the following:

(1) From the party filing the civil action, a service fee of ten dollars (\$10) for each additional defendant named other than the first named defendant.

(2) From any party adding a defendant, a service fee of ten dollars (\$10) for each defendant added in the civil action.

(c) This section does not apply to an action in which service is made by publication in accordance with Indiana Trial Rule 4.13.

Brief Answer

It is the opinion of this office that the term "defendant," as used in Indiana Code sections 33-37-4-6 and 33-37-5-28, was not intended by the Indiana General Assembly to include "garnishee defendants" and therefore a clerk may not collect a service fee for each named garnishee defendant.

Analysis

Indiana Code chapters 33-37-4 and -5 set out various court fees. Court fees "are generally those amounts paid to a public official, such as the clerk of the court, by a party for particular charges typically delineated by statute...." *U.S. v. Idaho Dept. of Water Res.*, 508 U.S. 1, 8 (1993). "The term 'fees' is applied to the items chargeable by law between the court officer and the party whom he or she serves...." 15A Am. Jur. 2d *Clerks of Court* §14. Indiana courts have noted that fees reasonably intended to reimburse the government for the cost of administering justice are not in violation of Article 1, section 12 of the Indiana Constitution which provides that justice "shall be administered freely and without purchase." *State v. Laramore*, 94 N.E. 761, 763 (Ind. 1911). Indiana Code article 33-37 sets out various court fees applicable to proceedings in circuit, superior, county, probate, and city and town courts. Ind. Code §33-37-1-1.

Under newly amended section 33-37-4-6, the legislature has instructed the clerk to collect for each small claims action a "small claims service fee" from the plaintiff of ten dollars for each named *defendant*. Ind. Code

§33-37-4-6(a)(1)(B). The clerk may collect an additional ten-dollar service fee from either the plaintiff or defendant for each additional *defendant* either party adds to the action. Ind. Code §33-37-4-6(a)(2). Indiana Code section 33-37-5-28 allows for the collection of a "civil action service fee." For civil actions subject to civil costs fees under 33-37-4-4, a clerk may collect a ten-dollar service fee from the plaintiff for each additional *defendant* named after the first defendant. Ind. Code §33-37-5-28(b)(1). Additionally, the clerk may collect a service fee of ten dollars from either the plaintiff or defendant for each additional *defendant* added to the action. Ind. Code §33-37-5-28(b)(2). The term "defendant" is not further defined in Title 33.

The words of the statute should be given their plain and ordinary meaning. Ind. Code §1-1-4-1(1); *Goffinet v. State*, 775 N.E.2d 1227, 1235 (Ind. Ct. App. 2002). The term "defendant" ordinarily means "the party defending or denying; the party against whom relief or recovery is sought in an action." Black's Law Dic. 419 (6th ed. 1990). See *Doe v. Donahue*, 829 N.E.2d 99, 107 (Ind. Ct. App. 2005) (noting that English language dictionaries may be used when determining the plain and ordinary meaning of a statutory term). "The character in which any one is made a party to an action is determined from the allegations in the complaint." *State ex rel. Young v. Niblack*, 99 N.E.2d 839, 841 (Ind. 1951) (citations omitted). Unless named as a defending party to the underlying claim on the merits in the original complaint filed by the plaintiff, a "garnishee" is typically not a "defendant" to the original action.

Garnishee proceedings are governed by statute at Indiana Code chapter 34-25-3 and by Indiana Trial Rule 69(E). A garnishment is a proceeding intended to preserve the property of the defendant that is in the hands or control of a third party, the garnishee, in order to satisfy a judgment granted in favor of the plaintiff. *Bowyer Excavating, Inc. v. Ind. Dept. Envtl. Mgt.*, 671 N.E.2d 180, 187 (Ind. Ct. App. 1996). A separate complaint is not required to be filed in garnishment proceedings against the garnishee. *Whitaker v. Coleman*, 25 Ind. 374 (Ind. 1865). The garnishee proceedings are initiated by the filing of a motion in the same court under the same cause number for proceedings supplemental to the original action between the parties. William F. Harvey, 4 *Indiana Practice Rules of Procedure Annotated* at 41 (3rd ed. 2003). Proceedings supplemental are not independent actions, but are a continuation of the original action between the parties in order to enforce the underlying judgment against the defendant. *Id.*; see also *Gallant Ins. Co. v. Oswalt*, 672 N.E.2d 1254, 1257 (Ind. Ct. App. 2002). The "Author's Comments" included in Harvey's *Indiana Practice Rules of Procedure Annotated* indicate that because the proceedings are a continuation of the original cause of action, "no additional filing fees will be required." *Id.* Thus, the nature of the garnishment proceedings as proceedings supplemental do not implicate the garnishee as a "defendant" to the original action.

Furthermore, although sometimes referred to as a "garnishee defendant," the role of a garnishee is that of a third party to the litigation between the original plaintiff and defendant (sometimes referred to as the "judgment plaintiff" and the "judgment defendant" or "judgment debtor" in garnishment proceedings). "A garnishee, in the eyes of the law, is a mere stakeholder, a custodian of the property or funds in his hands attached. He has no pecuniary interest in the matter, he does not have to pay costs, and he has discharged his full duty when he has let the law take its course between the original litigants. He has no right to favor one party more than another, and he should stand and act indifferent and without prejudice to either party." *Nevian v. Poschinger*, 55 N.E. 1033, 1035 (Ind. App. 1900). The garnishee acts as a neutral "third person" so far as the litigation between the parties is concerned and may not participate in the proceedings in a manner that may prevent the collection of the judgment owed the plaintiff or interfere with or question the original action between the plaintiff and the defendant. *Id.*; *Richardson v. Slough*, 147 N.E.2d 562, 565-66 (Ind. App. 1958).

The statutory language of chapter 34-25-3 governing garnishee proceedings clearly makes reference to the garnishee as a "person" or "garnishee defendant" and differentiates the garnishee from the plaintiff and the defendant in an action. See Ind. Code §34-25-3-1 et seq. One must presume that the legislature was aware of existing statutes in the same area and must construe differing statutes together to produce a harmonious result. *Schafer v. Sellersburg Town Council*, 714 N.E.2d 212, 217 (Ind. Ct. App. 1999). By distinctly referring to the garnishee as a "person" in the garnishment statutes, it would appear that the legislature did not intend for garnishees to then be considered a "defendant" for purposes of fee assessments under the court fee statutes.³ Moreover, Indiana Trial Rule 69 also describes the garnishee as a "person" and provides that the garnishee is entitled to service of process as provided in Trial Rule Rule 4, rather than under Rule 5 which is reserved for persons already parties to an action. See *Citizens Nat'l Bank of Grant Co. v. Harvey*, 339 N.E.2d 604, 609 (Ind. Ct. App. 1976) (noting Trial Rule 69(E) prescribes services upon the garnishee defendant under Trial Rule 4 "since the garnishee, unlike the judgment debtors, is normally not a party to the original action").

Given the garnishee's neutral role as a third party in proceedings supplemental to the original cause of action between the plaintiff and the defendant, and based on the statutory references to the garnishee as a "person" or "garnishee defendant" under chapter 34-25-3 and in the Indiana Trial Rules, it is the opinion of this office that the

legislature did not intend for clerks to collect a ten-dollar service fee from the plaintiff for each named garnishee defendant under Indiana Code section 33-37-4-6 or 33-37-5-28.

Sincerely,

Stephen Carter
Attorney General

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¹Two separate acts were passed during the 2005 legislative session amending section 36-37-4-6. First, Public Law 2-2005 (House Enrolled Act 1398) was signed by Governor Daniels on April 25, 2005. Subsequently, Public Law 176-2005 (House Enrolled Act 1113) was signed by the Governor on May 6, 2005. Pursuant to the established rule of statutory construction, when two inconsistent acts are passed by the same session of the legislature, even if they become effective at the same time, the more recently passed statute is controlling. Therefore, because Public Law 176-2005 (House Enrolled Act 1113) was passed subsequent to Public Law 2-2005, it is effective. *Baldwin v. Reagan*, 715 N.E.2d 332, 340 (Ind. 1999).

²Additions are indicated in **bold** type, deletions in ~~strikethrough~~ type.

³Other states have made express statutory references to the collection of court fees for garnishment proceedings. See Ala. Code 1975§12-19-75 ("In civil cases in circuit court and district court there shall be collected a fee for the initiation of each of the following postjudgment proceedings . . . Twenty-eight dollars (\$28) for garnishment . . ."); Colo. Rev. Stat. §13-32-104 (" . . .the following fees shall be paid to the clerk of the court by the party ordering the same: . . . For issuing a writ of garnishment, a fee of fifteen dollars for each garnishee named in the writ; and, on and after March 18, 2003, the fee shall be increased by ten dollars . . ."); Miss. Code Ann. §25-7-25 ("Costs and fees in the justice court shall be charged as follows . . . after final judgment has been enrolled, further proceedings involving levy of execution on judgments, and attachment and garnishment proceedings [\$]15.00 . . ."); Or. Rev. Stat. §702 ("Circuit court miscellaneous fees . . . Issuing writs of execution or writs of garnishment, \$7 for each writ"); Tex. Code Ann. Govt. Code T. 2, Subt. G App. B, Jud. Conduct, § 101.061 (". . . for issuing . . . writ of garnishment . . . \$8") and § 101.081 ("court fees: . . . garnishment after judgment \$15"); and Wis. Stat. Ann. §814.62 ("The clerk shall collect the following fees . . . The fee for commencing a garnishment action . . . is \$20").

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